

CHILD WELFARE IN PROGRESS

Staff Development Sub-Project.

Information Guide To The Child Welfare Act

Written by Human Resources Development Canada.

Unit III

Training Supervision Orders Resources

Development Apprehensions

Service for Court and

Regional Rights of Appearance Central Region.



APR 11 1989

ACKNOWLEDGEMENTS

This manual is the result of input and written contributions from a broad range of Departmental staff. The Child Welfare Implementation Project is appreciative of the efforts of these individuals. Through their support and involvement, both the quality and relevance of this manual was greatly enhanced.

The Child Welfare Implementation Project would also like to thank the following staff of Alberta Social Services who have contributed to the writing and technical development of the Orientation Manual:

ALBERTA SOCIAL SERVICES

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Information Guide To The Child Welfare Act

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CHILD WELFARE IN PROGRESS**December, 1986**

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- Jim Barnett - Writer, Human Resources of Canada.
- Joyce Hanley - Training Officer, Training Resources Corporate Staff Development.
- Alyson Lavers - Regional Representative, Central Region, Alberta Social Services
- Judy Maggs - Regional Representative, Northeast Region.
- Ann Moore - Regional Planner, South Region, Alberta Social Services.
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Senior Director

Family and Children's Services

Alberta Social Services

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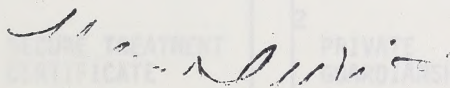
PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,



Helen Wentz
Senior Director
Family and Children's Services
Alberta Social Services

Page 1

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Marion Wentz
Senior Director
Family and Children's Services
Alberta Social Services

THE INFORMATION GUIDE SERIES

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YOUNG REFERENCE ACT

UNIT III

The specific objective for this third module, as in the others, is to have you read the information and complete the final exercises, with little or no assistance. If you have additional questions that are not answered here, or if you have questions regarding the answers given, please consult with your supervisor.

SECTION 1

Supervision Orders

This topic covers circumstances where a child welfare worker may find it necessary to request a supervision order. It offers an explanation of a supervision order, review of an order, and breach of an order.

SECTION 2

Apprehensions

This topic deals with the two types of apprehension under the Act: non-emergency and emergency apprehension. Issues following apprehension are covered, including a "demand notice."

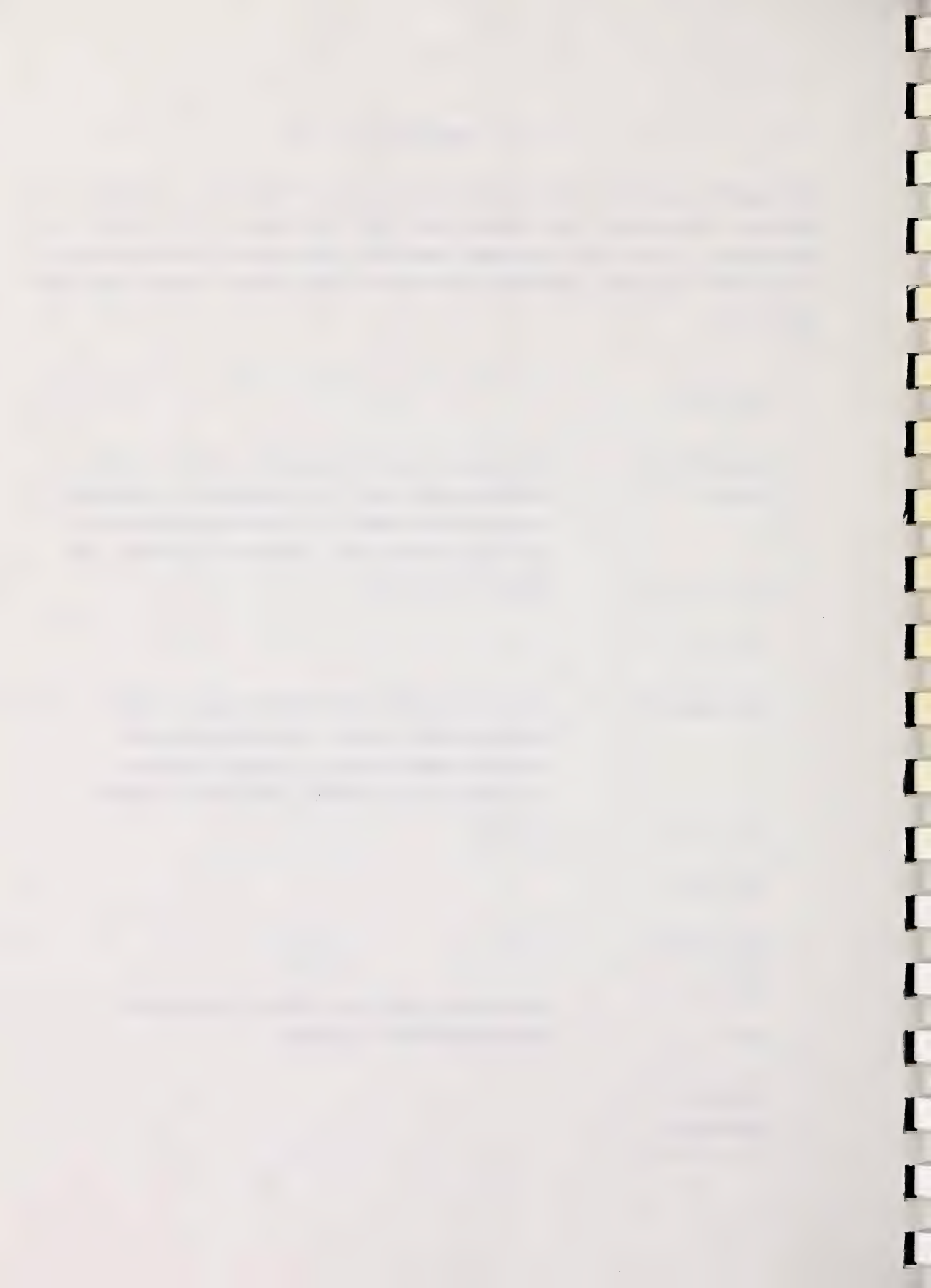
SECTION 3

Service for Court

and

Rights of Appearance

Service for court and rights of appearance are summarized in a chart.



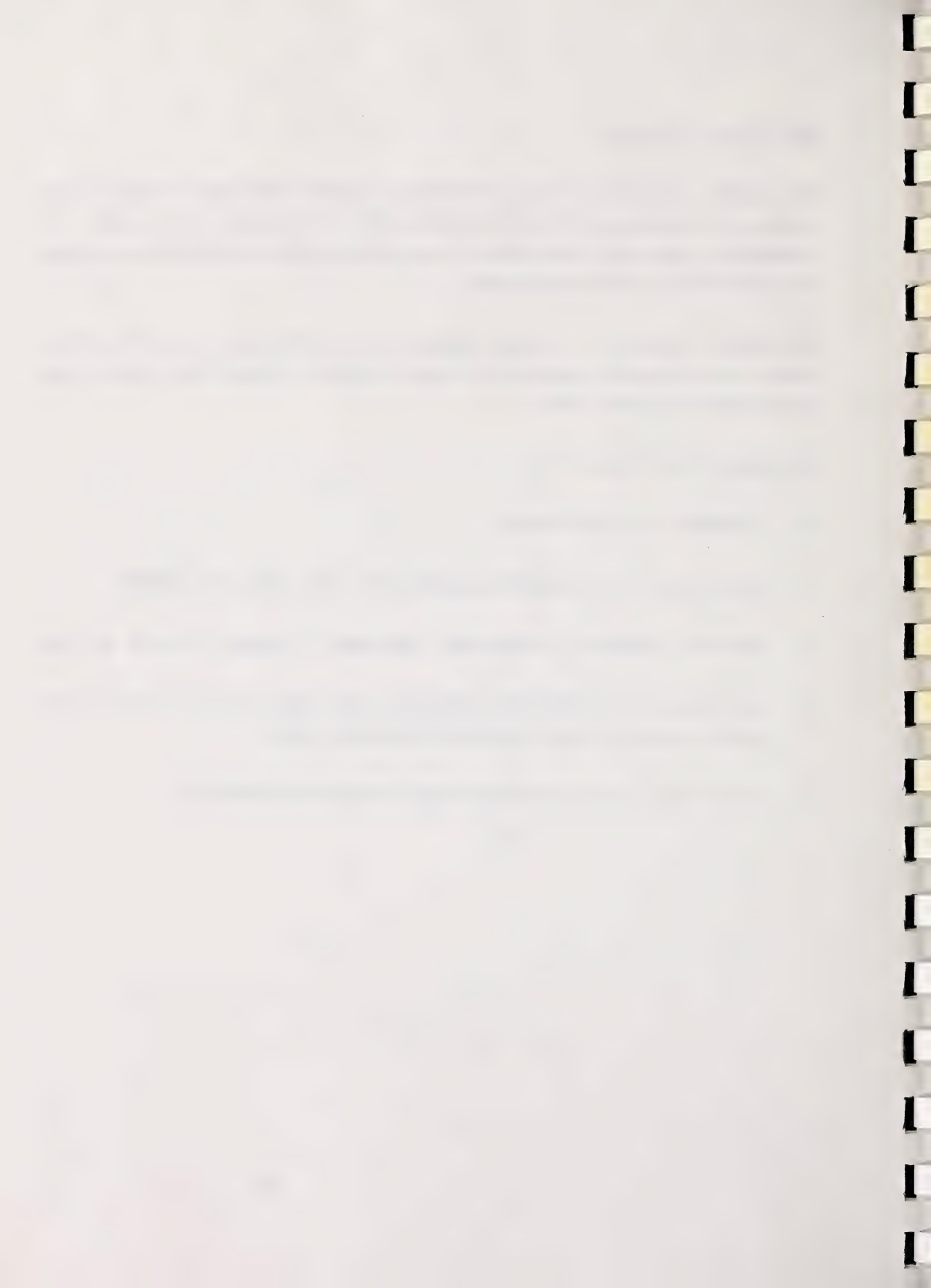
HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute video-tapes that may be available to you.

The overall objective of these modules is to give you, the child welfare worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

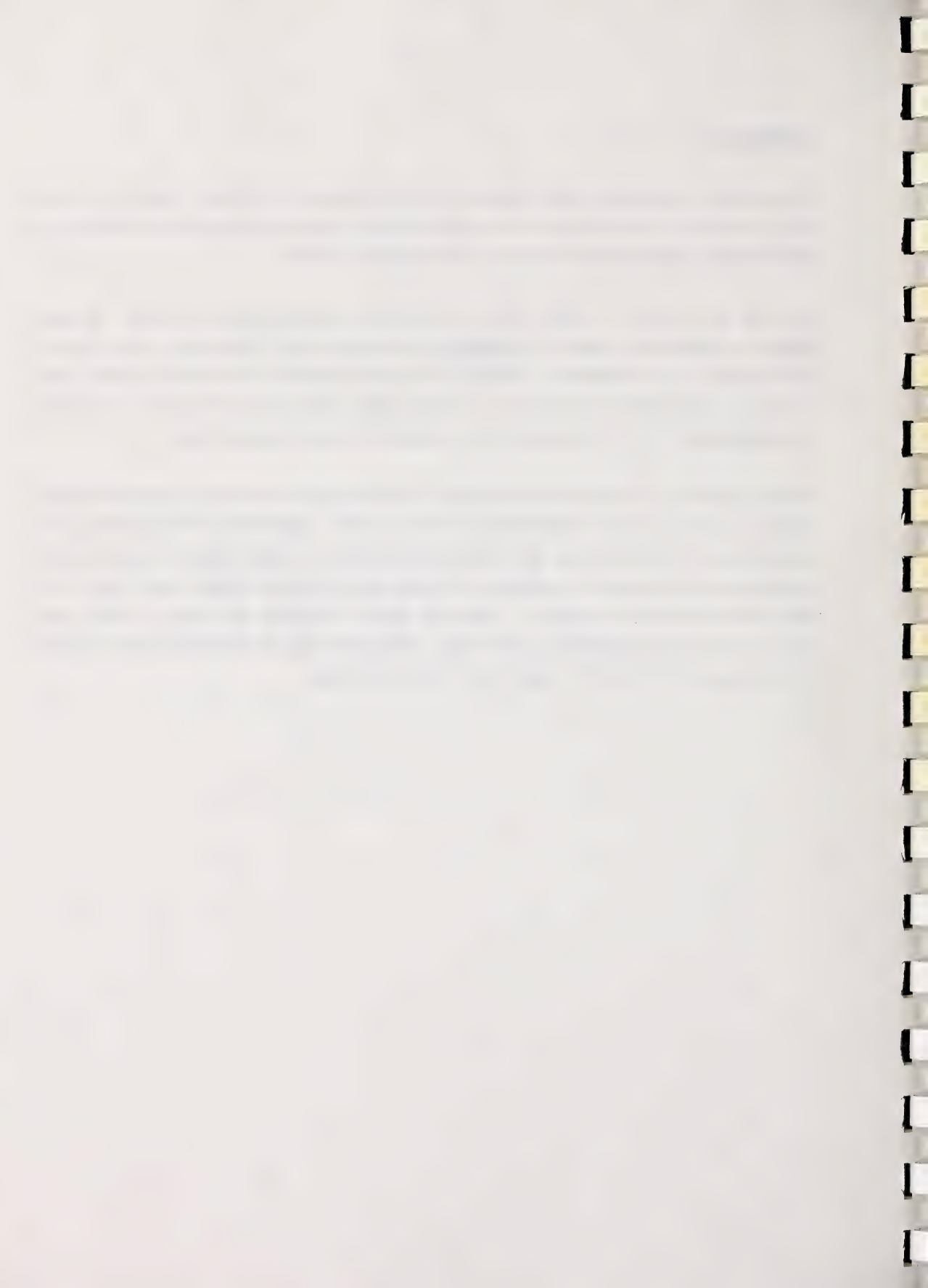


INTRODUCTION

The Act has given new significance to the supervision order (Sections 14 and 26). Workers are able to have court-ordered access to a family in order to provide the supervision necessary to protect a child.

As with all orders, a child must be in need of protective services. We must prove a supervision order is necessary to ensure that "survival, security, or development" is protected. Finally, we must believe or be able to show that there are reasonable and probable grounds that the child's "survival, security or development" will be adequately protected through supervision.

While keeping in mind the Department's philosophy and policy recognizing the family as the primary functioning unit and the importance of supporting and preserving its well-being, child welfare workers do come across situations and conditions that make it necessary to act on a child's behalf when she is in need of protective services. Instances arise in which the force of the court may be the most appropriate and least intrusive way of ensuring that a child is protected while still remaining in her own home.



SECTION 1 - SUPERVISION ORDERS

If, in the opinion of the child welfare worker, a child is in need of protective services, and other services have proven insufficient, the worker may act on behalf of a director and apply for a supervision order. There are two different methods for applying to court to obtain an order. One is the direct application process which avoids the use of apprehensions. Application may be made directly to the court for a supervision order, temporary guardianship order or permanent guardianship order, providing the child's survival, security and development is not endangered if left in his present situation. The other method of obtaining an order is following apprehension. This will be discussed later.

A supervision order is an order which a judge gives to a director. It gives that director the authority to intervene and supervise a family in a case where a child or children are found to be in need of protective services.

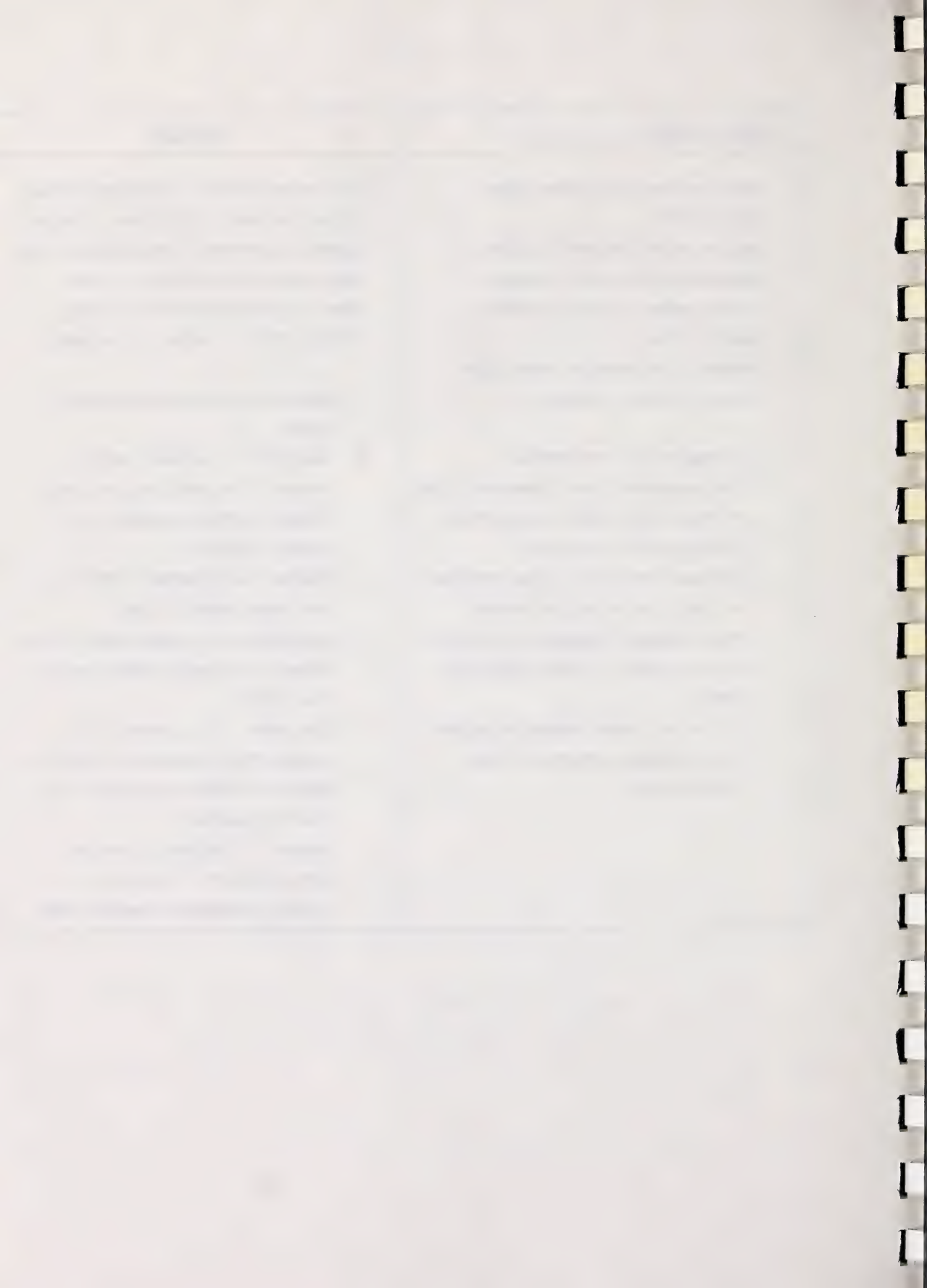
In keeping with Departmental policy, this maintains the integrity and stability of the family, but allows the Department to provide any needed support to the child or children.

When a child welfare worker makes an application for a supervision order on behalf of a director, the court may grant a supervision order for a period of not more than six months, if:

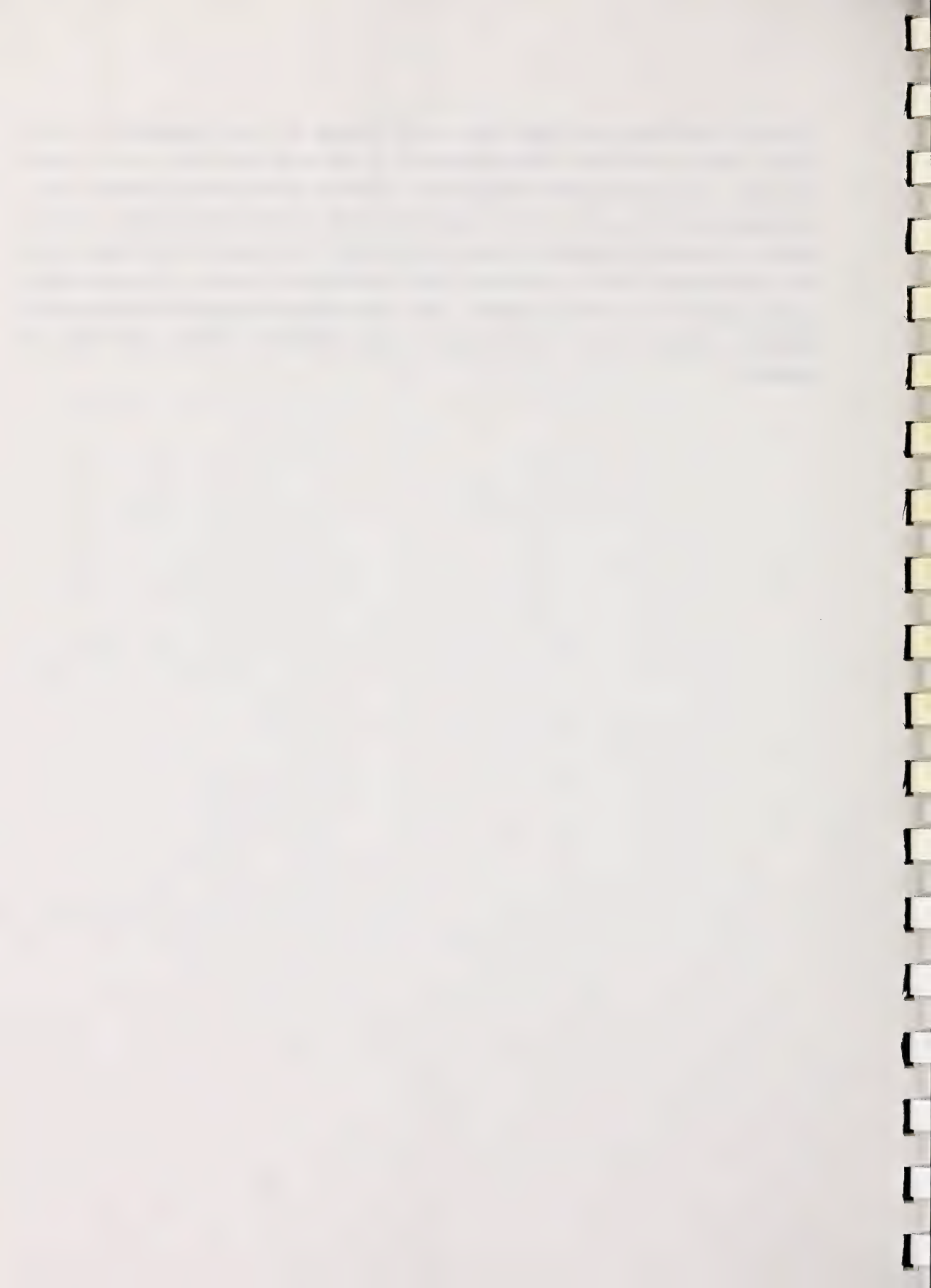
- a. the child is in need of protective services;
- b. supervision of the child and persons with whom the child resides is necessary to ensure that the survival, security or development of the child is protected;
- c. there are reasonable and probable grounds to believe the child will be adequately protected as a result of the supervision; and
- d. all persons residing with the child will comply with the terms of the order.

(C.W.A. Section 14)

<u>How to Apply</u>	<u>Example</u>
1. Apply on the prescribed form (SSCH 1594). 2. Include with the application recommendations with respect to the terms of the proposed supervision. 3. Present a documented case plan to court which includes: ° statement of the problem ° the assessment and treatment plan of the child and/or any persons residing with the child ° proposed services to be provided or facilitated by the worker ° the proposed frequency of visits by the worker to the child and family ° all other terms deemed necessary ° the intended outcome of the intervention	A 12 year old girl is being abused by her mother's boyfriend. Mother agrees to protect her daughter and keep the boyfriend out of the home. Application for a super-vision order - terms to include: 1. Worker to visit home once a week. 2. Daughter to attend weekly counselling sessions at the Family Service Bureau re: sexual assault. 3. Mother to transport child to and from counselling. 4. Boyfriend not permitted in the home or to have contact with the child. 5. Outcomes: As a result of successful treatment, child is able to relate to males in a healthy manner. 6. Mother's failure to protect the child will result in child's removal from the home.



The child welfare worker must make every attempt to reach agreement with the child, family and other affected persons on the case plan prior to the court hearing. The worker shall arrange for a hearing within thirty calendar days following the filing of a direct application for a supervision order. If the child is known or believed to be Native Indian, the worker must comply with the conditions stated in sections 73(2) and 73(3) of the Act. A supervision order may be for up to six months, but since custody and guardianship remains with the family, there is no limit to the number of orders which may be sought.



Review of Supervision Order

Once the Court has made an order it may be reviewed:

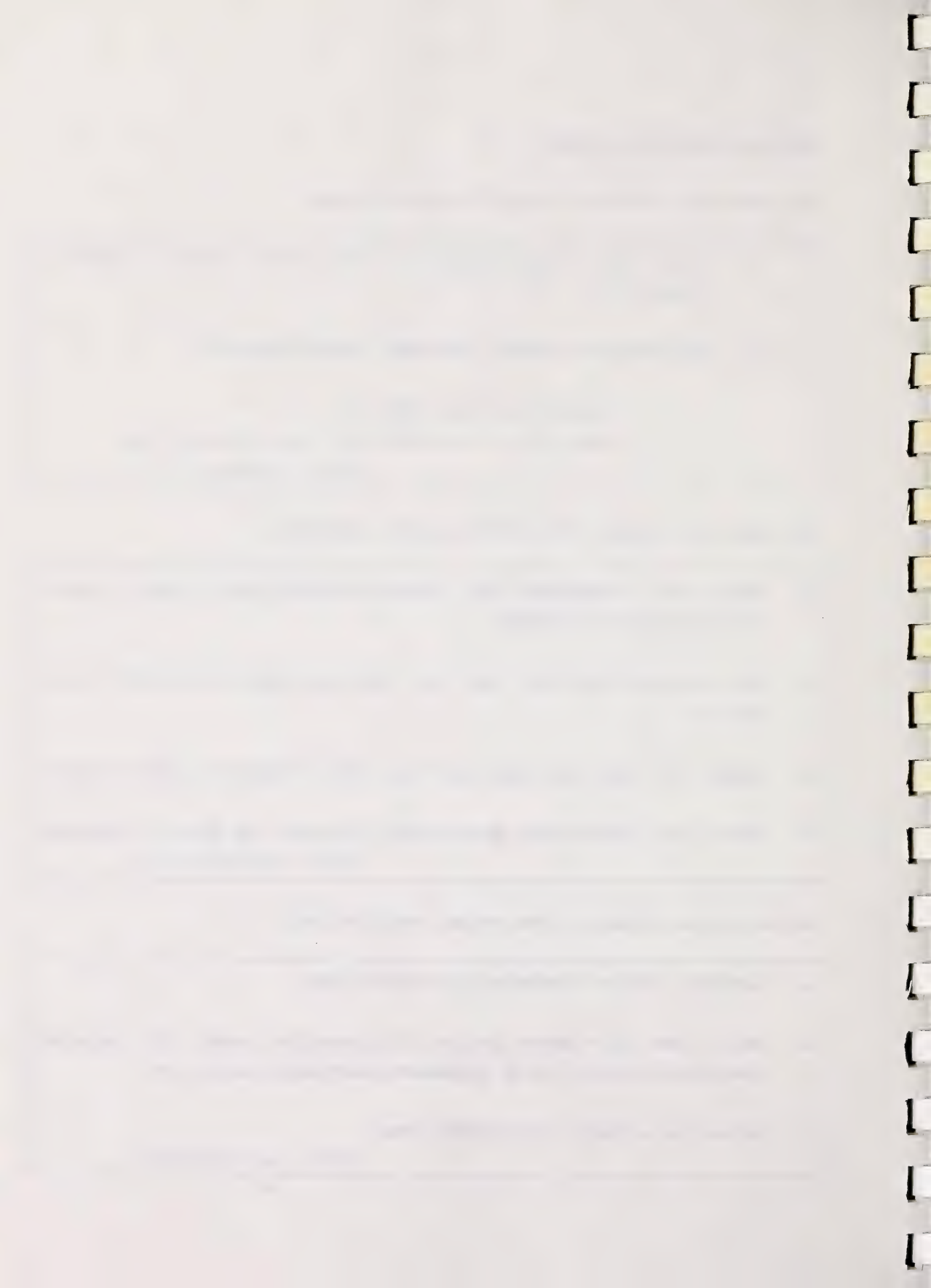
- a. at any time, on application of a child welfare worker (on behalf of a director);
 - b. once during the term of the order, on application of
 - i. a guardian of the child, or
 - ii. the child, if the child is 12 years of age or over.
- (C.W.A. Section 30 (1))

The Court may consider all relevant matters, including:

- a. whether the circumstances that caused the child to be in need of protective services have changed;
 - b. the protective services that have been provided to the child or the family;
 - c. whether the case plan that was filed with the Court has been followed;
 - d. whether the guardian has complied with the order and terms of the order.
- (C.W.A. Section 30 (2))

On hearing the evidence at the review, the Court may:

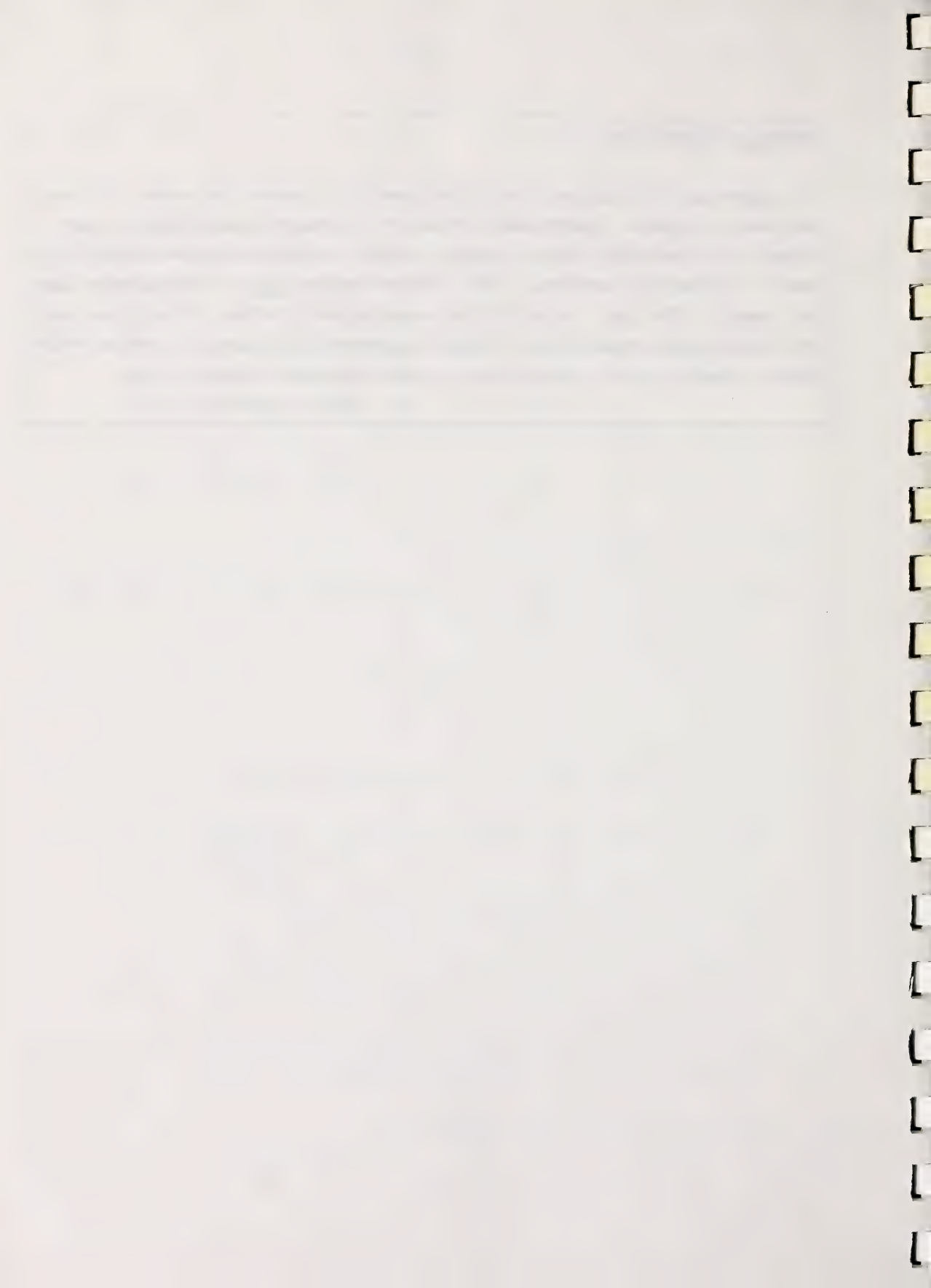
- a. continue, vary or terminate the original order;
 - b. make a new order under Section 26 (supervision order), 29 (temporary guardianship order), or 32 (permanent guardianship order); or
 - c. extend the period of the original order.
- (C.W.A. Section 30 (3))



Breach of Supervision

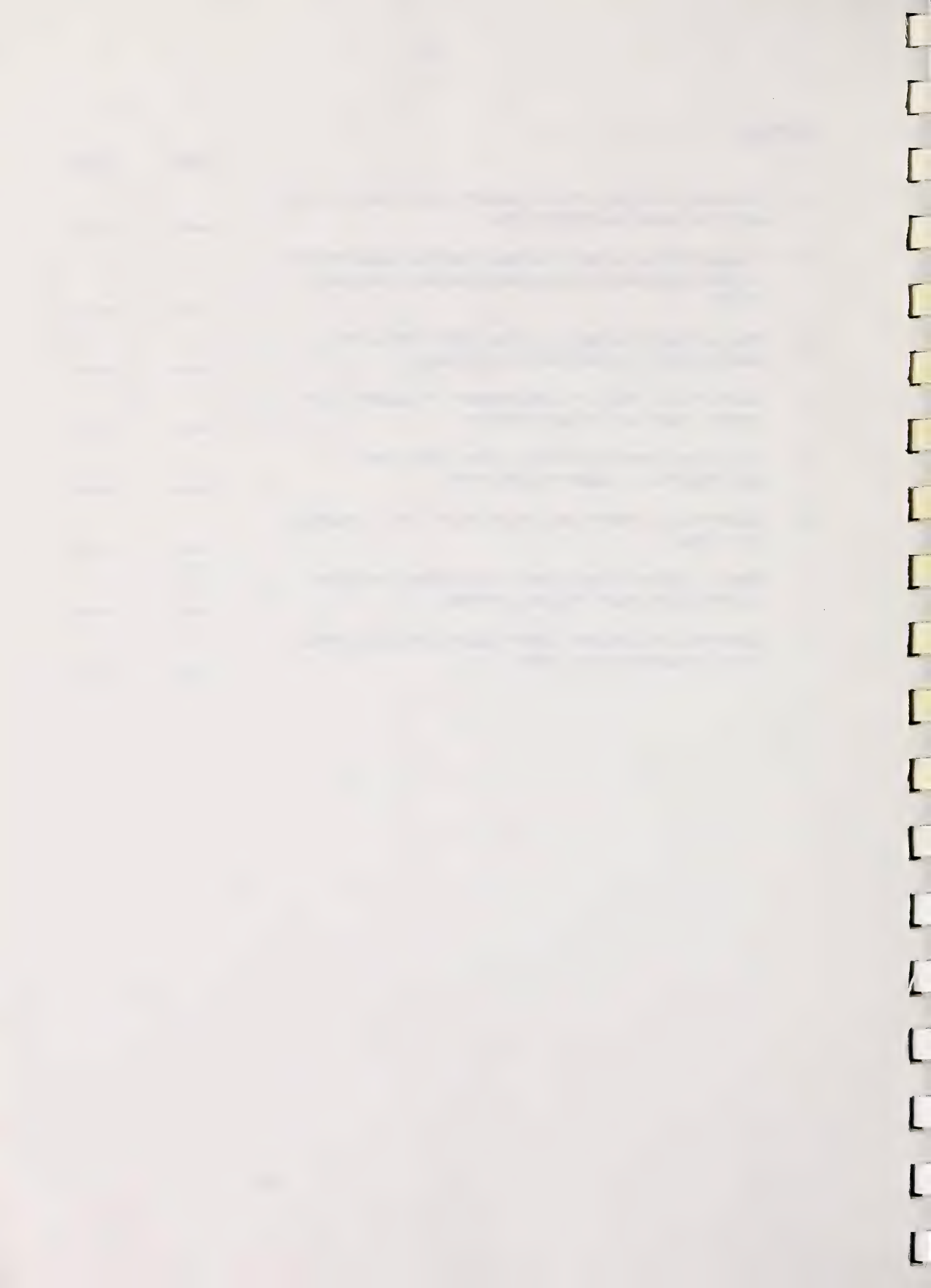
If a guardian fails to comply with the terms of a supervision order, the court may make a temporary guardianship order or a permanent guardianship order in respect of the child without hearing further evidence that the child is in need of protective services. This section applies only if the guardian does not comply. The Court is restricted regarding which orders it may give under this section, as noted above. It may be preferable to pursue a review rather than a breach if your intent is not to seek guardianship specifically.

(C.W.A. Section 27 (1))



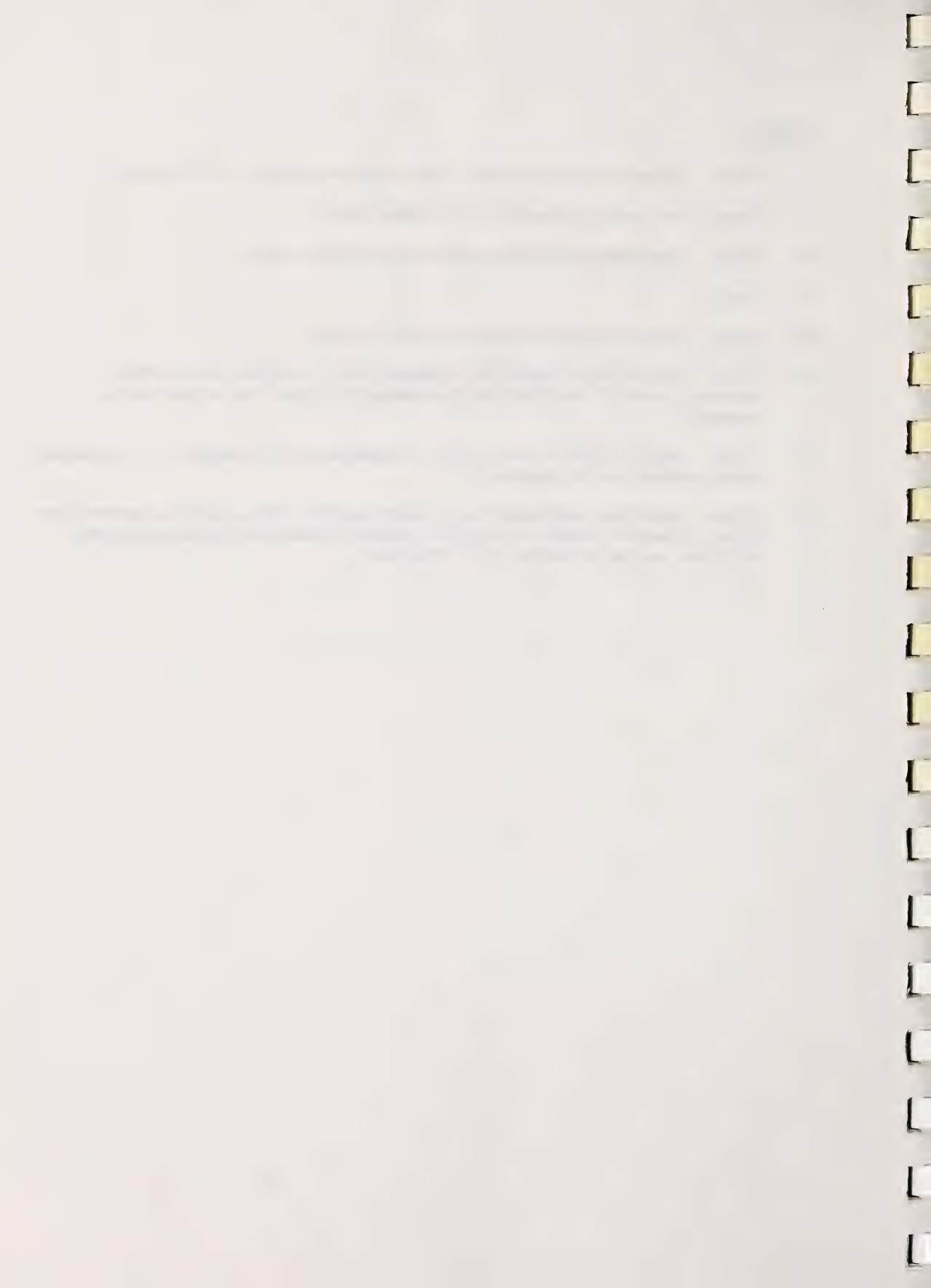
Exercise

	<u>True</u>	<u>False</u>
1. In order to apply for a supervision order, a child must be under apprehension.	_____	_____
2. A supervision order provides for the supervision of the guardian(s)/caretakers as well as the child.	_____	_____
3. Once an application is filed with the Court, a hearing must be held within 90 days.	_____	_____
4. There is no limit in the number of supervision orders that may be applied for.	_____	_____
5. You do not need to file a case plan when applying for a supervision order.	_____	_____
6. Supervision orders may be granted for 12 months at a time.	_____	_____
7. When a supervision order is breached, another supervision order may be granted.	_____	_____
8. Guardians relinquish their guardianship rights under a supervision order.	_____	_____



Answers

1. False. Supervision and other orders can be applied for directly.
2. True. The Court can set all inclusive terms.
3. False. The hearing must be held within thirty days.
4. True.
5. False. Case plans are required on all cases.
6. False. Supervision orders are granted for a 6 month time period; however, there is no limit on the number of times the order can be renewed.
7. False. When a supervision order is breached, only temporary or permanent guardianship can be ordered.
8. False. Guardians maintain their guardianship rights under a supervision order. However, under a custody agreement some guardianship responsibilities may be delegated to a director.



References

1. Alberta Social Services
Handbook - Child Welfare in Progress
Tab 03
Pages 04 - 10, 31 - 32, 46 - 47, and 52 - 53.
2. Alberta Social Services
Program Manual - Child Welfare in Progress
Chapter 5
Page 31.

SECTION II - APPREHENSIONS

There are two types of apprehension under this Act. One is an apprehension order which is granted by a judge. The other is an emergency apprehension under Section 17(9), for which a judge's order is not required. Note that when apprehending a child of age 16 or 17 it is mandatory that you obtain an apprehension order; an emergency apprehension is NOT permitted on children of this age.

The seriousness of the decision to apprehend is such that, if at all possible, workers shall consult with their supervisor prior to proceeding.

The criteria of the Act regarding the definitions of a child in need of protection must be considered (e.g. age, mental capacity), as well as the capacity of the caretaker to protect the child, and the nature of the situation.

Non-Emergency Apprehension

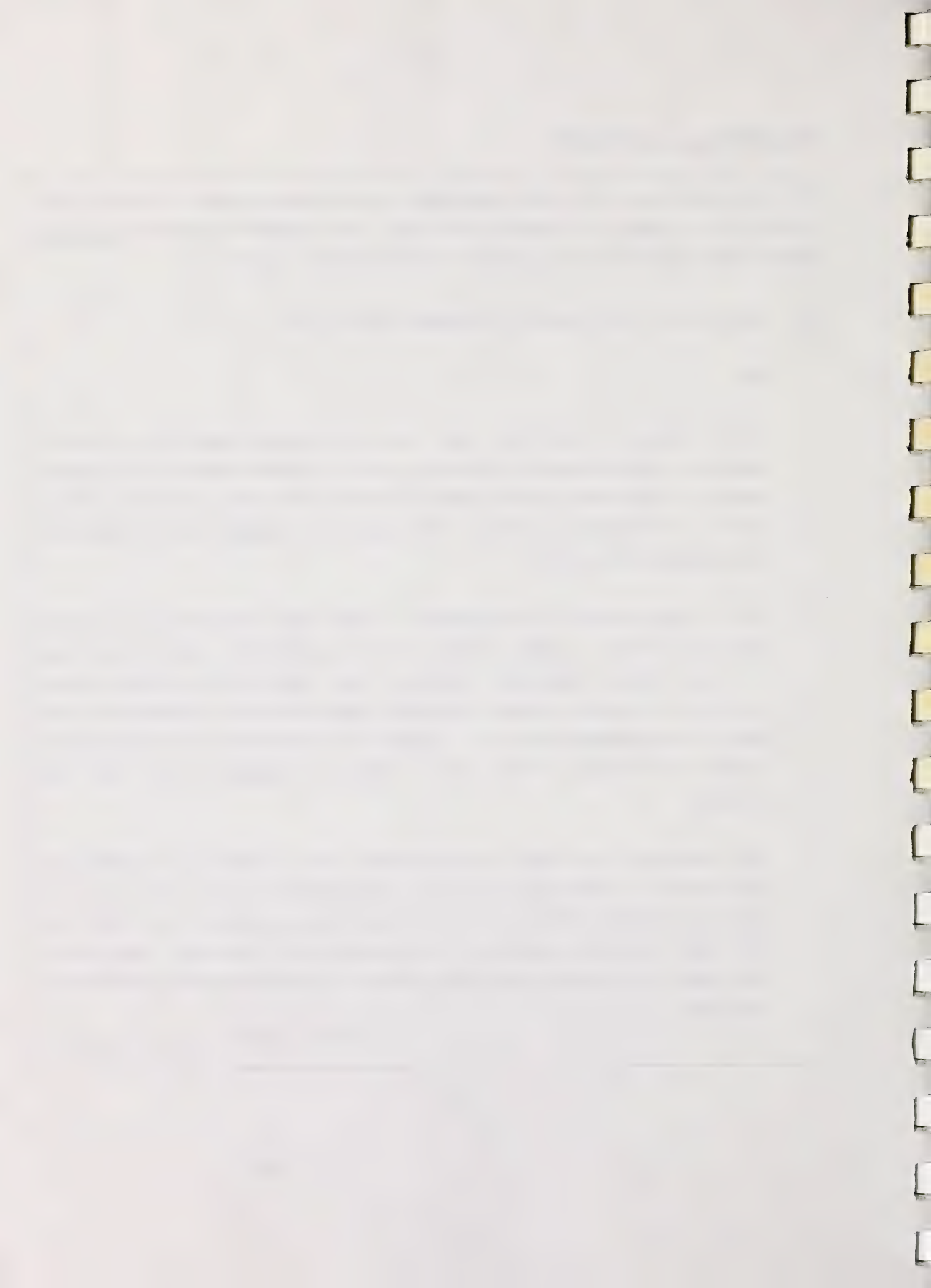
If a child welfare worker has reasonable and probable grounds to believe that a child is in need of protective services, the director may make an ex parte (one-sided) application to a judge of the Provincial Court:

- ° Authorizing the director to apprehend the child

OR

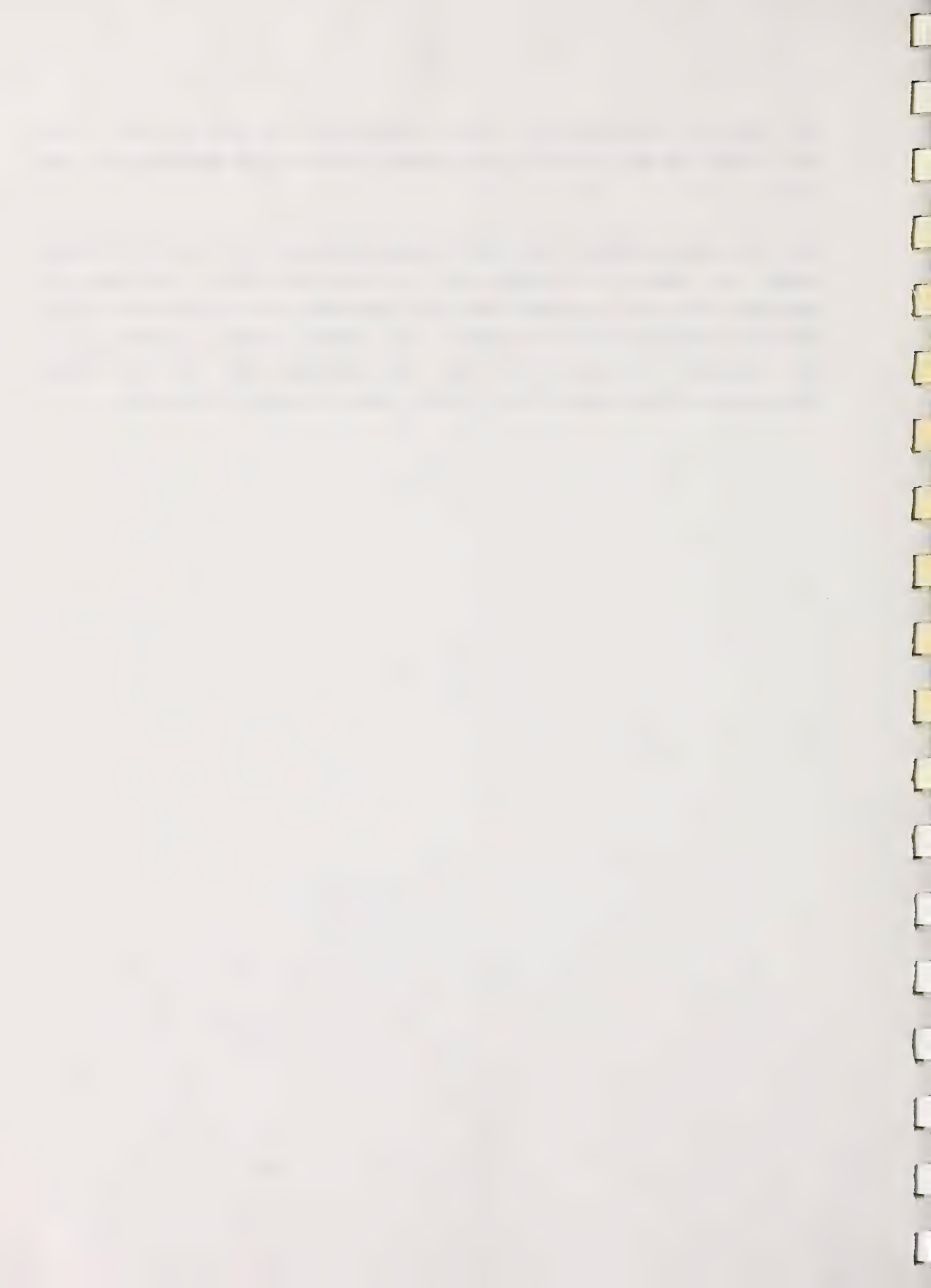
- ° If the judge is satisfied that the child may be found in a place or premises, authorizing the director, a child welfare worker or any person named in the order and any peace officer called upon to assist him to enter, if necessary by force, that place or premises and to search for and apprehend the child.
- ° If, in the opinion of a director, it would be impracticable to appear personally before a judge to apply for an apprehension order in the case of late nights, weekends, distance, etc., the child welfare worker, acting on a director's behalf, may make application by telephone or other means of telecommunication to a judge of the Provincial Court designated by the Chief Judge of the Court. There are judges on call for this purpose.
- ° The information on which an application for an order by telephone or other means of telecommunication is based shall be given under oath and shall be recorded verbatim by the judge who, as soon as it is practicable, shall cause the record or a transcription of the record certified by the judge as to time, dates and contents, to be filed with the clerk of the Court.

(C.W.A. Section 17 (1) to (4))



The judge can dispense with a personal appearance and issue an order. This can include the same authority with respect to search and apprehension of the child.

Once the judge grants an order by telecommunication, then the child welfare worker must complete a facsimile for the file (SSCH 1636). The judge will complete and sign the order and file the order and a transcript of the recorded conversation with the court. Even though an order is granted, it is not necessary to execute the order and apprehend the child if further investigation finds the child not to be in need of protective services.



NON-EMERGENCY APPREHENSION

CONDITIONS	EXAMPLE
1. A statement of the circumstances that make it impracticable for the director to appear personally before a judge of the Court or a justice. 2. A statement of a director's grounds for believing that a child is in need of protective services and the identity of the child, if the identity is known. 3. A statement of a director's grounds for believing that the child will be found in the place or premises to be searched. 4. A statement as to any prior application for an order under the section in respect of the same child, of which the director has knowledge.	The child welfare worker on call is contacted at 11:00 p.m. Caller alleges that there are sounds of a child screaming in the next apartment. Worker goes to apartment - no one will answer, and sounds of sobbing heard. Worker consults by phone with the supervisor - phones judge for an apprehension order, giving all known facts. Worker is granted an apprehension order, fills out the facsimile, and contacts the police to assist in the search and possible apprehension. (C.W.A. Section 17 (5))

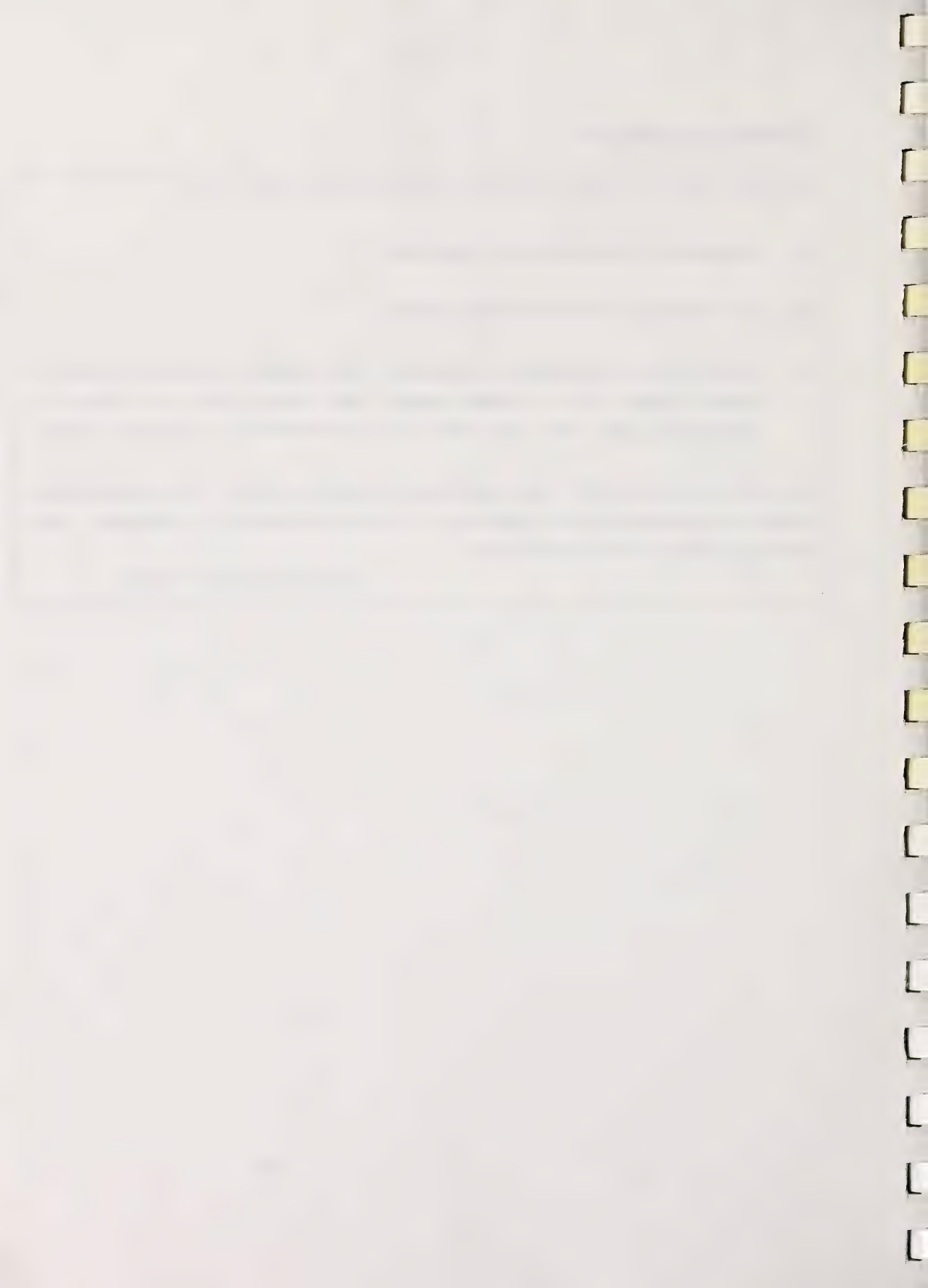
Emergency Apprehension

In cases where a child is in need of protective services and is:

- a. abandoned, lost or without a guardian,
- b. is a runaway, or out-of-control child,
- c. "seriously and imminently endangered" with regards to physical injury or sexual abuse; i.e. extreme abuse has taken place, or there is substantial risk that the child will be physically or sexually abused,

the child welfare worker may apprehend without an order. The circumstances should be reviewed with a supervisor as soon as possible. Reminder: This does not apply to 16-17 year olds.

(C.W.A. Section 17 (9))



Following Apprehension

In keeping with the philosophy of the Act that the Department use minimal intervention and that the family is the most appropriate place to deal with family concerns, the Act provides for the return of the child within two calendar days of the apprehension without having to go to Court, providing the child's survival, security and development can be adequately protected in the custody of the guardians. If a child is not returned to the custody of a guardian within two days after being apprehended, the child welfare worker must apply to Court in the prescribed form for a supervision order, a temporary or permanent guardianship order, or an order returning the child to the custody of his guardian.

Upon apprehension, custody decisions are made by a director, including decisions regarding:

- a. daily care and maintenance.
- b. medical, dental or rehabilitative treatment, if two physicians or dentists recommend it, in the absence of consent of the guardian.

(C.W.A. Section 20 (1))

In the case where a child is apprehended strictly because the guardian refuses to permit essential medical, surgical or remedial treatment, a director must apply to the Court for an order authorizing treatment. In this situation, the physician must believe the child's life to be in imminent danger, and the caseworker needs to arrange for a hearing in the hospital.

(NOTE: The guardian at the time of apprehension remains the guardian and retains all the usual power for the consents and decision-making.)

The Court may authorize treatment in such instances and the person(s) treating the apprehended child are not liable because the child's legal guardian did not consent to the required treatment.



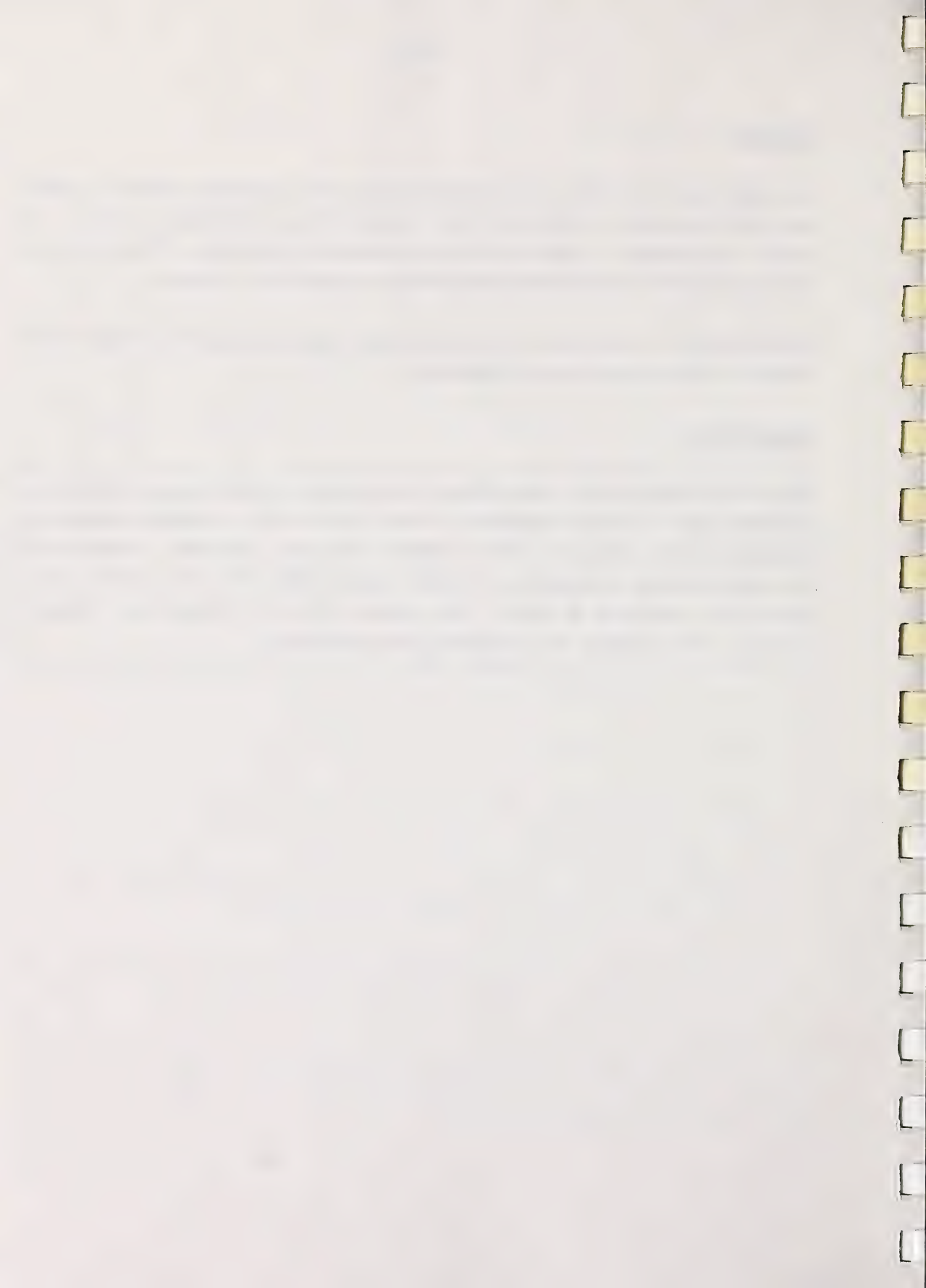
Example

An eight year old child is apprehended because the guardians refuse to permit the child to have a life-saving blood transfusion, on religious grounds. An order for treatment is applied for and granted by the Court. The child can then receive the blood transfusion without the guardian's consent.

Section 20(7) - confinement of a child under apprehension will be dealt with later in the module on Secure Treatment.

Demand Notice

Once an apprehension has taken place, a hearing must normally occur within ten calendar days. The one exception to this occurs when a guardian presents a director (or his designate) with a demand notice for a hearing. A notice can be presented upon apprehension, but only takes effect after the two day grace period for returning a child. The outside limit for presenting a demand notice is five calendar days following the apprehension.



Exercise

1. When returning a child to a guardian within two days of an apprehension, do we count:

- a. Saturday, Sunday and Holidays? _____
- b. the balance of the day the action took place? _____

2. Can police officers apprehend a child in need of protective services without a court order? _____

3. Please respond to the following questions:

	<u>True</u>	<u>False</u>
a. Emergency apprehension can occur only with children under 16 years of age.	_____	_____
b. An initial hearing after apprehension must occur within 30 days.	_____	_____
c. A child may be returned to a guardian within 48 hours of an apprehension without a subsequent court appearance.	_____	_____
d. Under apprehension, the department takes over guardianship responsibilities.	_____	_____
e. When a director is presented with a demand notice, a court hearing must be held within 10 days.	_____	_____
f. When a child is apprehended solely for medical treatment reasons, a court order must be obtained prior to the treatment taking place.	_____	_____
g. A justice of the peace may be used to obtain an apprehension order if a judge is unavailable.	_____	_____
h. Emergency apprehension may be used in cases of substantial risk of physical or sexual abuse.	_____	_____
i. Two physicians are required to authorize medical treatment for a child under apprehension if the guardians do not consent.	_____	_____
j. If a child welfare worker who has received an apprehension order is refused entry to a		



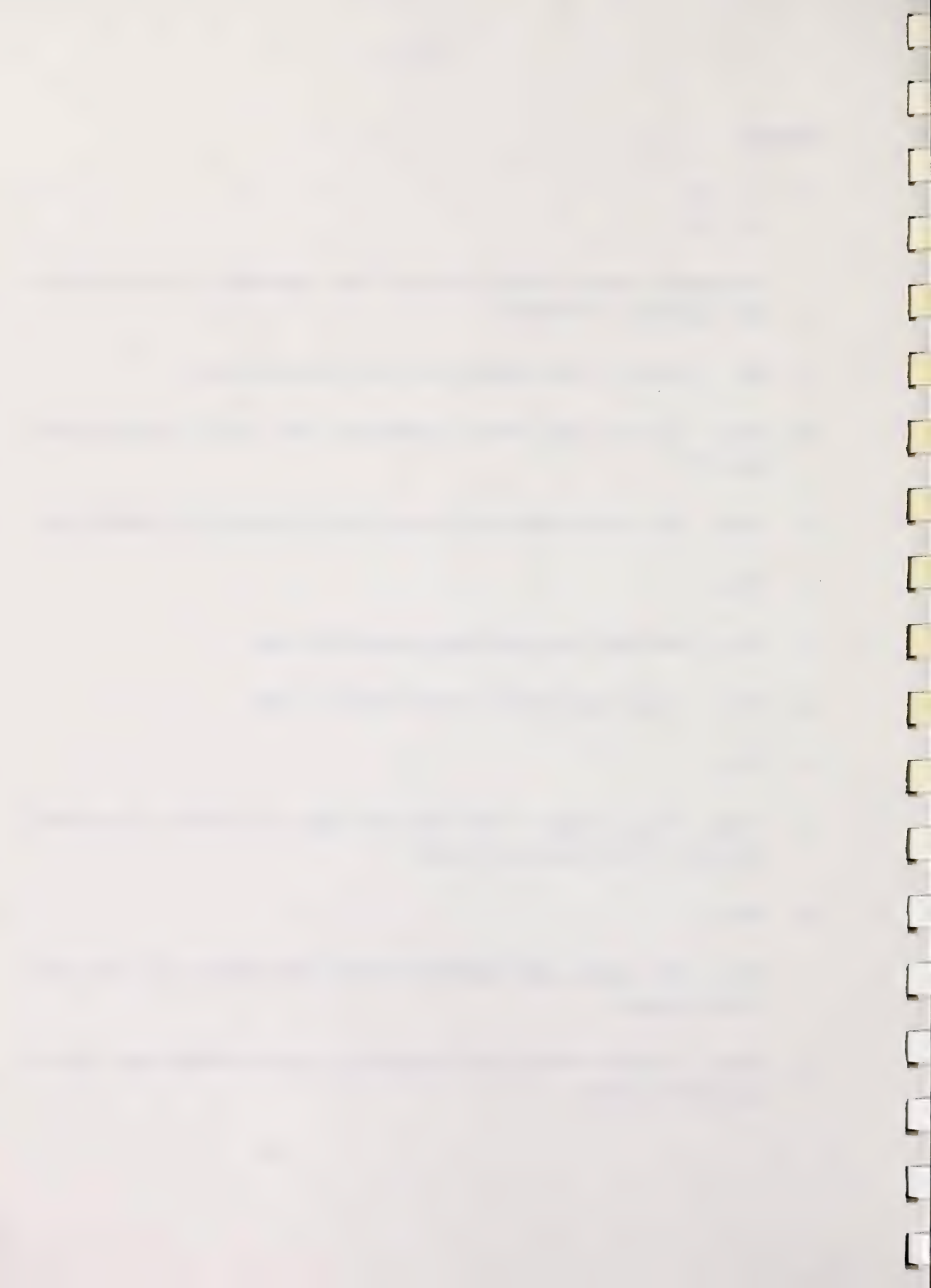
premises, he/she must return to court and
request a search warrant.

Answers

1. a. Yes
- b. No

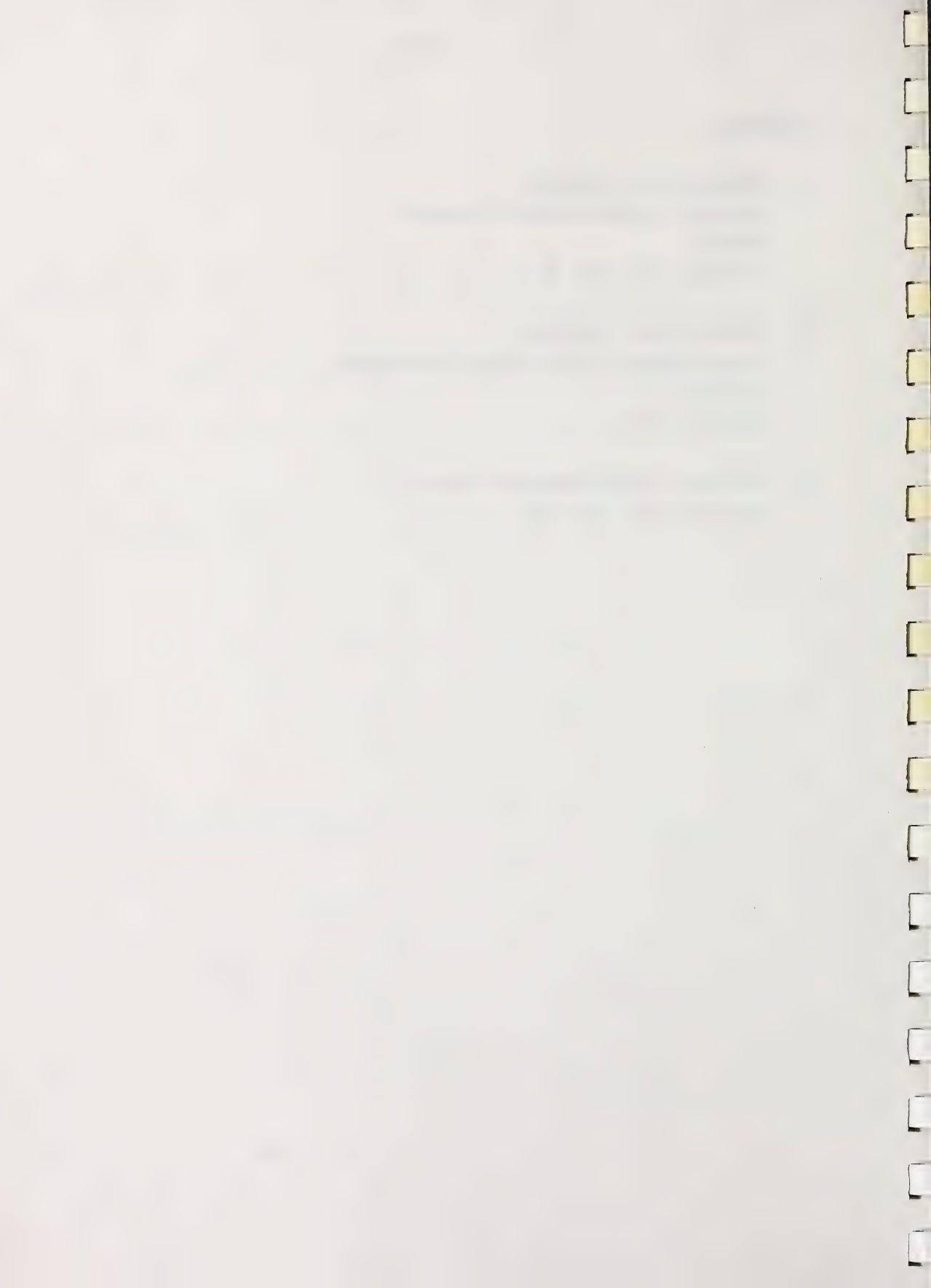
The Handbook reads "exclude the day of the apprehension and include the day the child is returned."

2. Yes. (Section 17, Sub-Section 9 of the Child Welfare Act)
- 3a. True. You must apply for an apprehension order for any child over the age of 16.
- b. False. The initial hearing must occur within 10 days after apprehension.
- c. True.
- d. True. A director has guardianship responsibilities.
- e. False. A court hearing must be held within one day.
- f. True.
- g. False. Only a Judge of the Provincial Court of Alberta can give the authority for an apprehension order.
- h. True.
- i. True. This assures prompt medical attention and impartiality on the part of the doctors.
- j. False. A search warrant is not required if a child welfare worker has an apprehension order.



References

1. Alberta Social Services
Handbook - Child Welfare in Progress
Tab 03
Pages 30 - 31, 33 - 39.
2. Alberta Social Services
Program Manual - Child Welfare in Progress
Chapter 4
Pages 23 - 29.
3. Helping in Child Protective Services
Pages 53 - 78, 117 - 121.



SECTION III - SERVICE FOR COURT AND RIGHTS OF APPEARANCE

Service for Court involves serving notice to all involved parties in relation to a particular case. This allows for proper time preparation and input to the court from all appropriate persons.

Service Court includes the notice requirements and rights of appearance of all appropriate parties under the Act.

A summary of service for Court and rights of appearance is found in the Notice Requirements on the next page.

Some additional points to keep in mind are:

- a. Court is open, i.e. public.
- b. It is the responsibility of the worker to protect the family's right to confidentiality by requesting that court be closed, if she deems it to be necessary.
- c. Section 25 - The Court has the ability to make any order under its jurisdiction (Part 4 and Part 3 of legislation) regardless of the order applied for by a director.

N O T I C E R E Q U I R E M E N T S

SITUATION	SECTION C.M.A.	FORM/FORMAT	DISTRIBUTION	TIME LINES re: service	OTHER CRITERIA/ DEPARTMENT POLICY
1. Notice upon apprehending	18	oral or in writing - outlining reasons for apprehension and rights of guardian under S.19	to guardian(s) of the child	"forthwith"	1. reasonable effort 2. notice given in a prepared statement
2. Demand Notice	19(3)	prescribed form SSCH 1603	to director	day 3-5 after apprehension	
3. Notice in response to demand notice	19(5)	oral or in writing - giving time and place of hearing	to guardian(s) and the child if 12 or over	"forthwith"	hearing to take place not more than 1 day after director served a demand notice
4. Notice of application for an order after apprehension	19(7)	- giving prescribed time and place of hearing	to guardian(s) and the child if 12 or over	not less than 2 days	hearing to take place no more than 10 days after apprehension
5. Notice for other applications under Part 3 (i.e. an application for a supervision, temporary or permanent guardianship order)	21	personal service unless applicant makes <u>ex parte</u> application at any time before hearing and judge authorizes alternatives in S.21(3)	- to all guardians - a director, if not the applicant - child if 12 or over - foster parent if child in their care more than 6 months - immediately preceding application - any other person in whose care the child was when apprehended, if she was in continuous care for of the person for more than 6 months preceding the application	5 days unless provision of 21 (3) apply	Department policy is to make reasonable effort to serve any other person standing "in loco parentis", or a putative father who acknowledges paternity, has voluntarily provided care and support, or has demonstrated an intention to treat the child as his own

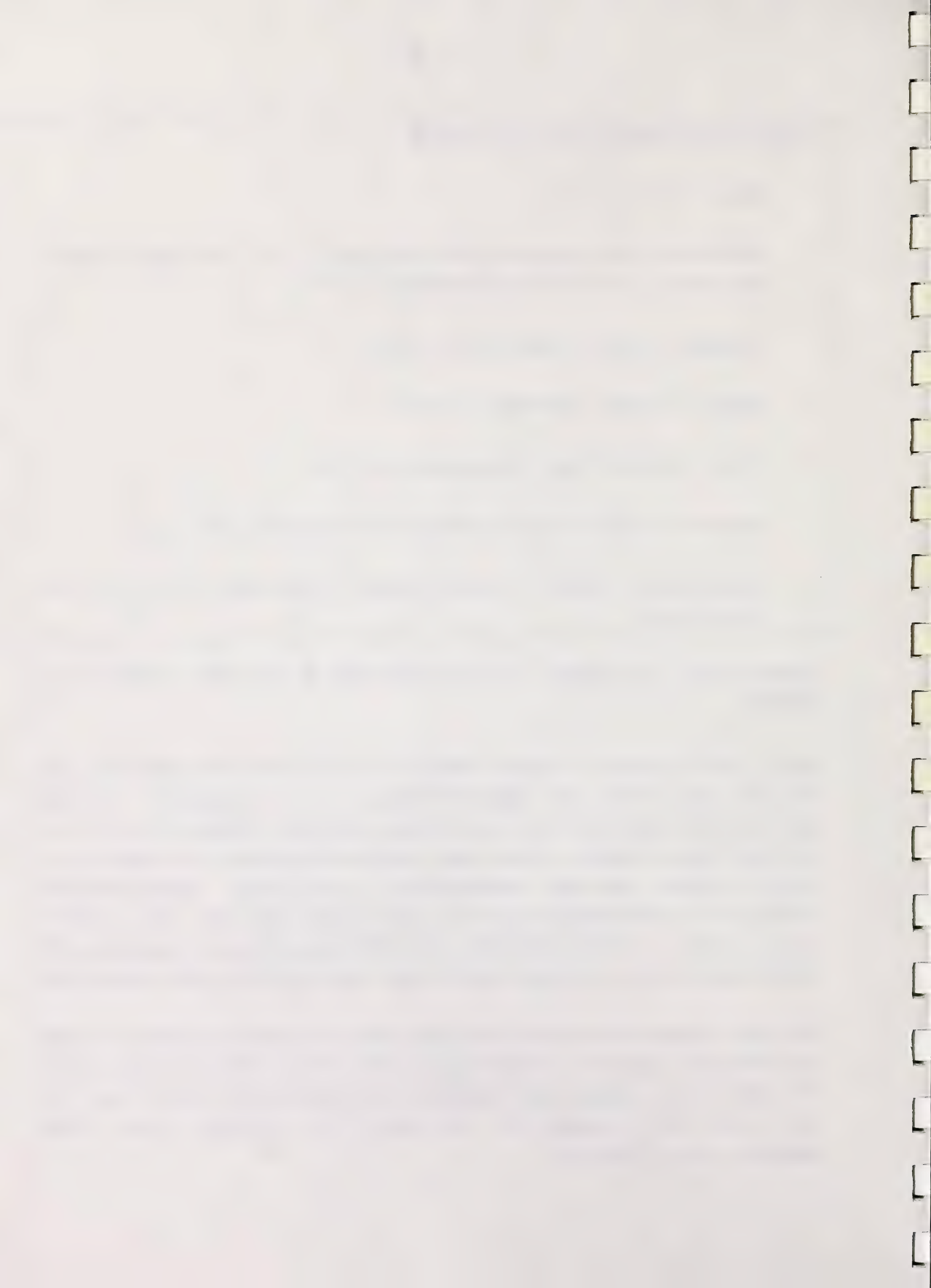
Issues to be Determined at First Hearing

- ° Age of Child (S. 76)
- ° Persons who have standing before the courts (e.g., who requires notice, who can be a party to the proceedings) (S. 77)
- ° Custody, if matter adjourned (S. 24(2))
- ° Access, if matter adjourned (S.24(2))
- ° Child's need for legal representation (S. 78)
- ° Persons (if any) to be excluded from the hearing (S. 22)
- ° Protection of rights of underage parent or guardian (S. 90) - a rare circumstance

WORKERS SHOULD BE PREPARED TO OFFER ASSISTANCE TO THE COURT REGARDING THESE MATTERS.

When a child's case is brought before the Court there are people who have varying roles, rights and responsibilities to be in attendance. A foster parent or any person who has had continuous care and custody of the child for not less than six months, or any other person with consent of the court, has a right to appear and make representations to the Court. Persons directly related to the proceedings may have a more responsible role, and a right to appear. This may include the child, the child's guardian(s), an applicant for joint guardianship, a director and/or legal representatives where appropriate.

The court reserves the right to exclude persons or publication which it deems are seriously injurious or prejudicial to the child. Further, it may exclude from the hearing, people and/or publication of information where it would not be in the best interest of the public, or infringes on the proper administration of justice.



The court may not exclude a director, the Children's Guardian or a lawyer representing any of the parties.

Exercise

	<u>True</u>	<u>False</u>
1. If necessary, it is the responsibility of the child welfare worker to protect the family's right to confidentiality by requesting that the court be closed.	_____	_____
2. A demand notice is issued 3-5 days after apprehension.	_____	_____
3. A notice of application for an order after apprehension can be made in 10-14 days.	_____	_____

Answers

1. True
2. True
3. False. Needs to be made in not less than 2 days.

References

1. Alberta Social Services
Handbook - Child Welfare in Progress
Tab 03
Pages 41 - 46, 102.
2. Alberta Child Welfare Act.

